STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 123321-001-SF**

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _20th____ day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On September 13, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1952 *et seq.* Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner reviewed the request and accepted it on September 20, 2011. The Petitioner receives health coverage through the State of Michigan, a governmental self-funded group. The plan is administered by Blue Cross and Blue Cross of Michigan (BCBSM). His benefits are defined in the State Health Plan *Benefit Guide* (the certificate).

Because medical issues were involved, the case was assigned to an independent medical review organization which provided its analysis and recommendation to the Commissioner on October 4, 2011.

II. FACTUAL BACKGROUND

On May 3, 2011, the Petitioner was bitten by a tick. He was treated by a physician and given instructions for home care. On May 17, 2011, the Petitioner woke up with a rash and was concerned it was caused by the tick bite. He went to the emergency department of XXXXX

Medical Center in XXXXX, Michigan. The charge for the care was $555.00. BCBSM denied coverage for the emergency department treatment, ruling that the care was not treatment of an emergency.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on August 17, 2011, and issued a final adverse determination dated September 1, 2011, upholding its denial.

III. ISSUE

Did BCBSM correctly deny coverage for the emergency department services Petitioner received on May 17, 2010?

IV. ANALYSIS

Petitioner's Argument

In his request for external review, the Petitioner wrote:

> As described in the patient aftercare provided on 05/03/2011 it states several times to return to E.R. if new symptoms or rashes develop. Until the morning of 5/17/11 there was no reason for concern. The rash developed from the "bite area" of the tick & I was in fear of infectious onset of Lyme disease. This visit was directly related to visit of 05/03/11. Should be covered the same.

The Petitioner believes that his May 17, 2011, treatment at the emergency room was medically necessary and a covered benefit under his coverage.

BCBSM's Argument

In its final adverse determination, BCBSM explained its denial of benefits:

> Our medical consultants reviewed the submitted documentation. Based on that review, it was determined that the care was received for an uncomplicated skin rash without systemic symptoms which is not a medical emergency and can be safely treated in a lesser setting. Therefore, we are unable to approve reimbursement for the charges totaling $555.

BCBSM maintains that there is no information in the medical records that indicate the Petitioner had a condition that could result in serious bodily harm or threaten life unless treated immediately.

Commissioner's Review

Coverage for emergency medical care is addressed in two provisions of the Petitioner's certificate. The first provision appears on page 19:

> **Other outpatient hospital benefits**
>
> **Emergency medical care** - The initial exam and treatment of accidental injuries or conditions in an emergency room are covered when determined by BCBSM to be medical emergencies. This includes both professional and facility services. Treatment must occur within 48 hours of the injury or 72 hours of the medical emergency.
>
> Routine care for minor medical problems such as headaches, colds, slight fevers and back pain is not considered emergency care. Also, follow-up care is not considered emergency care.

The second provision is the certificate's definition of "medical emergency" contained on page 83:

> **Medical Emergency**
>
> A condition that occurs suddenly and unexpectedly, producing severe signs and symptoms, such as acute pain. A person would reasonably expect that this condition could result in serious bodily harm without prompt medical treatment.

The question of whether Petitioner's May 17, 2011, services were treatment of a medical emergency was presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is board certified in emergency medicine and has been in active practice for more than 12 years. The IRO reviewer provided the following analysis and conclusion:

> [T]he member was seen in the emergency department on 5/3/11 for a tick bite. . . . [A]t that time, the tick was visualized but the member did not have a rash. . . . [A] rash can take 3 to 30 days to develop after a tick [bite]. . . . [T]he member's primary care physician referred him to the emergency department. . . . [T]he member was not tested for Lyme disease on 5/3/11, but . . . a negative test at that time would not have been conclusive as additional time is often needed between the time of the bite and testing for a positive test to develop.
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> * * *
>
> [T]he member had a headache several days later and . . . developed a rash a week later.
>
> * * *

> [W]hile the member's Lyme disease titer was ultimately negative and he did not have signs of anaphylaxis or respiratory distress, the emergency department visit on 5/17/11 was reasonable. . . . [I]t [is] likely that the member's primary care physician's office would not have been able to process Lyme disease titers. . . . [T]he emergency department sent this testing to an out-of-state laboratory. . . . [B]ased on what the member was taught and told on 5/3/11, he had reason to be concerned that the headache and rash were signs of a tick-borne illness. . . . [T]he member could not have determined the cause of his rash and that many rashes **are** unidentifiable without biopsy or blood testing. . . . [T]he long term effects of undiagnosed and untreated Lyme disease can be life altering. . . . [I]t is reasonable to seek prompt attention for diagnosis and treatment if one believes that he or she is suffering from Lyme disease.
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> . . . [T]he emergency department services that the member received on 5/17/11 were for treatment of an emergency medical condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise and professional judgment. The Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

The Commissioner finds the May 17, 2011, emergency department services were for treatment of an emergency medical condition under the terms of the certificate.

V. ORDER

The Commissioner reverses Blue Cross Blue Shield of Michigan's final adverse determination of September 1, 2011. BCBSM is required to provide coverage for the emergency department care the Petitioner received on May 17, 2011, within 60 days of the date of this Order and shall, within seven (7) days of providing coverage, submit to the Commissioner proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner